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Hon. Eric R. Komitee
 United States District Court
 Eastern District of New York
 225 Cadman Plaza East
 Brooklyn, NY 11201

United States Magistrate Judge Bloom
 United States District Court
 Eastern District of New York
 225 Cadman Plaza East
 Brooklyn, NY 11201

December 21, 2020

Re: Capogrosso v. Gelbstein et al, No. 18-cv-2710, Letter Re: discovery dispute

Judge Komitee:

Judge Magistrate Bloom:

Pursuant to Local Rule 37.3 for the United States District Courts for the Southern and Eastern Districts of New York I come to this Court by way of this letter motion to resolve the underlined discovery disputes. I have made a good faith effort with the defendants to resolve the discovery disputes outlined herein and no resolution has been reached.

Defendant Smart has refused to respond to my Interrogatories and Demand for Production of Documents, dated August 25, 2020, **Exhibit A**, demand that he produce an email and available deposition dates, dated September 2, 2020, **Exhibit B**, and my Notice of Deposition that he appear at his deposition on December 17, 2020, **Exhibit C**. Defendant Smart did not appear at his deposition scheduled for December 17, 2020. Defendant Smart is willfully avoiding prosecution.

I also attach **Exhibit D** which show letters from defendant Smart to myself, which were served upon me after my service of interrogatories and Request for Production of Documents upon him on August 25, 2020 and a request for an email address on September 2, 2020, that I not write him any longer and directs me to communicate with "PEC" or the "City Bar Justice Center." for my answers. Neither has put in an appearance for defendant Smart and therefore are unable to respond to any deposition notice or provide a response to my interrogatories. Defendant Smart has not appeared at our last two pre-trial conferences.

Second, I seek to depose two non-party witnesses. They are Cindy (last name unknown), and Marisol Cervini, both of whom were clerks at the Brooklyn TVB in May 2015. I have been ordered by this Court not to appear at the Brooklyn TVB; I have been ordered to hold all depositions remotely (therefore I cannot subpoena these nonparty witnesses to appear at the courthouse, my office or a court reporters office), I cannot gather any information from these nonparty witnesses by interrogatories as they are nonparties. In addition, I have been given subpoena documents from your clerk, **Exhibit E**, which require that any depositions be taken at your Courthouse, which I am not allowed to do. I

have made several phone calls to your pro se clerk and have received no clarification concerning the subpoena documents provided. I am not admitted in your Court and therefore do not feel it proper to create my own subpoena documents.

I seek the following relief: 1) defendant Smart provide answers to my interrogatories and respond to my demand for production of documents dated August 25, 2020 and be made to produce an email and requisite laptop so I may conduct a Zoom deposition or in the alternative to provide a telephone number so I can hold his deposition telephonically, 2) defendant Smart be made to appear at such deposition, 3) the State's Attorney Thompson produce the two clerks I choose to depose at a Zoom conference or produce a telephone number so that I can hold their deposition telephonically, and 4) I be given an extension of time of thirty days to complete such discovery.

Respectfully truthfully stated and submitted,



Mario H. Capogrosso

To: PRO SE OFFICE

From: MARIA H. CAPORASSO

RE: Caporasso v. Leibstein, et al.

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